

ILLEGIB

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To amend the copyright law, title 17 of the United States Code, to create public performance rights with respect to sound recordings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 1979

Mr. DANIELSON introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the copyright law, title 17 of the United States Code, to create public performance rights with respect to sound recordings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. This Act may be cited as the "Sound Re-
4 cording Performance Rights Amendment".

5 SEC. 2. Section 101 of title 17 of the United States
6 Code is hereby amended by deleting the definition of "per-

7 form" and inserting the following:

1 "To 'perform' a work means to recite, render,
2 play, dance, or act it, either directly or by means of
3 any device or process. In the case of a motion picture
4 or other audiovisual work, to 'perform' the work means
5 to show its images in any sequence or to make the
6 sounds accompanying it audible. In the case of a sound
7 recording, to 'perform' the work means to make audi-
8 ble the sounds of which it consists."

9 SEC. 3. Section 106 of title 17 of the United States
10 Code is hereby amended by deleting clause (4) and inserting
11 the following:

12 "(4) in the case of literary, musical, dramatic, and
13 choreographic works, pantomimes, motion pictures, and
14 other audiovisual works, and sound recordings, to per-
15 form the copyrighted work publicly; and"

16 SEC. 4. Section 110 of title 17 of the United States
17 Code is hereby amended as follows:

18 (a) in clause (2) insert the words ", or of a sound
19 recording," between the words "performance of a non-
20 dramatic literary or musical work" and "or display of
21 a work,";

22 (b) in clause (3), insert the words "or of a sound
23 recording," between the words "of a religious nature,"
24 and the words "or display of a work,";

1 (c) in clause (4), insert the words "or of a sound
2 recording," between the words "literary or musical
3 work" and "otherwise than in a transmission";

4 (d) in clause (6), insert the words "or of a sound
5 recording" between the words "nondramatic musical
6 work" and "by a governmental body";

7 (e) in clause (7), insert the words "or of a sound
8 recording" between the words "nondramatic musical
9 work" and "by a vending establishment";

10 (f) in clause (8), insert the words "or of a sound
11 recording embodying a performance of a nondramatic
12 literary work," between the words "nondramatic liter-
13 ary work," and "by or in the course of a transmis-
14 sion"; and

15 (g) in clause (9), insert the words "or of a sound
16 recording embodying a performance of a dramatic liter-
17 ary work that has been so published," between the
18 words "date of the performance," and the words "by
19 or in the course of a transmission".

20 SEC. 5. Section 111 of title 17 of the United States
21 Code is hereby amended by inserting, in the second sentence
22 of subsection (d)(5)(A), between the words "provisions of the
23 antitrust laws," and "for purposes of this clause" the words
24 "and subject to the provisions of section 114(c),".

1 SEC. 6. Section 112 of title 17 of the United States
2 Code is hereby amended as follows:

3 (a) in subsection (a), delete the words "or under
4 the limitations on exclusive rights in sound recordings
5 specified by section 114(a)," and insert in their place
6 "or under a compulsory license obtained in accordance
7 with the provisions of section 114(c)," and

8 (b) in subsection (b), delete the reference to "sec-
9 tion 114(a)" and insert "section 114(a)(5)".

10 SEC. 7. Section 114 of title 17 of the United States
11 Code is hereby amended in its entirety to read as follows:

12 "§ 114. Scope of exclusive rights in sound recordings

13 "(a) LIMITATIONS ON EXCLUSIVE RIGHTS.—In addi-
14 tion to the limitations on exclusive rights provided by sec-
15 tions 107 through 112 and sections 116 through 118, and in
16 addition to the compulsory licensing provisions of subsection
17 (c) and the exemptions of subsection (d) of this section, the
18 exclusive rights of the owner of copyright in a sound record-
19 ing under clauses (1) through (4) of section 106 are further
20 limited as follows:

21 "(1) the exclusive right under clause (1) of section
22 106 is limited to the right to duplicate the sound re-
23 cording in the form of phonorecords, or of copies of
24 motion pictures and other audiovisual works, that di-

1 rectly or indirectly recapture the actual sounds fixed in
2 the recording;

3 "(2) the exclusive right under clause (2) of section
4 106 is limited to the right to prepare a derivative work
5 in which the actual sounds fixed in the sound recording
6 are rearranged, remixed, or otherwise altered in se-
7 quence or quality;

8 "(3) the exclusive right under clause (4) of section
9 106 is limited to the right to perform publicly the
10 actual sounds fixed in the recording;

11 "(4) the exclusive rights under clauses (1) through
12 (4) of section 106 do not extend to the making, dupli-
13 cation, reproduction, distribution, or performance of an-
14 other sound recording that consists entirely of an inde-
15 pendent fixation of other sounds, even though such
16 sounds imitate or simulate those in the copyrighted
17 sound recording; and

18 "(5) the exclusive rights under clauses (1) through
19 (4) of section 106 do not apply to sound recordings in-
20 cluded in educational television and radio programs (as
21 defined in section 397 of title 47) distributed or trans-
22 mitted by or through public broadcasting entities (as
23 defined by section 118(g)): *Provided*, That copies or
24 phonorecords of said programs are not commercially

1 distributed by or through public broadcasting entities to
2 the general public.

3 “(b) RIGHTS IN SOUND RECORDING DISTINCT FROM
4 RIGHTS IN UNDERLYING WORKS EMBODIED IN RECORD-
5 ING.—The exclusive rights specified in clauses (1) through
6 (4) of section 106 with respect to a copyrighted literary,
7 musical, or dramatic work, and such rights with respect to a
8 sound recording in which such literary, musical, or dramatic
9 work is embodied, are separate and independent rights under
10 this title.

11 “(c) COMPULSORY LICENSE FOR PUBLIC PERFORM-
12 ANCE OF SOUND RECORDINGS.—

13 “(1) Subject to the limitations on exclusive rights
14 provided by sections 107 through 112 and sections 116
15 through 118, and in addition to the other limitations on
16 exclusive rights provided by this section, the exclusive
17 right provided by clause (4) of section 106, to perform
18 a sound recording publicly, is subject to compulsory
19 licensing under the conditions specified by this
20 subsection.

21 “(2) When phonorecords of a sound recording
22 have been distributed to the public in the United States
23 or elsewhere under the authority of a the copyright
24 owner, any other person may, by complying with the

1 provisions of this subsection, obtain a compulsory li-
2 cense to perform that sound recording publicly.

3 "(3) Any person who wishes to obtain a compul-
4 sory license under this subsection shall fulfill the fol-
5 lowing requirements:

6 "(A) On or before January 1, 1981, or at
7 least thirty days before the public performance, if
8 it occurs later, such person shall record in the
9 Copyright Office a notice stating an intention to
10 obtain a compulsory license under this subsection.
11 Such notice shall be filed in accordance with re-
12 quirements that the Register of Copyrights, after
13 consultation with the Copyright Royalty Tribunal,
14 shall prescribe by regulation, and shall contain the
15 name and address of the compulsory licensee and
16 any other information that such regulations may
17 require. Such regulations shall also prescribe re-
18 quirements for bringing the information in the
19 statement up to date at regular intervals.

20 "(B) The compulsory licensee shall deposit
21 with the Register of Copyrights, at annual inter-
22 vals, a statement of account covering the preced-
23 ing calendar year, and a total royalty fee for all
24 public performances during that calendar year,
25 based on the royalty provisions of clause (7) or (8)

1 of this subsection. After consultation with the
2 Copyright Royalty Tribunal, the Register of
3 Copyrights shall prescribe regulations prescribing
4 the time limits and requirements for the filing and
5 contents of the statement of account and royalty
6 payment.

7 “(4) Failure to record the notice, file the state-
8 ment, or deposit the royalty fee as required by clause
9 (3) of this subsection renders the public performance of
10 a sound recording actionable as an act of infringement
11 under section 501 and fully subject to the remedies
12 provided by sections 502 through 506 and 509.

13 “(5) Royalties under this subsection shall be pay-
14 able only for performances of copyrighted sound re-
15 cordings fixed on or after February 15, 1972.

16 “(6) The compulsory licensee shall have the option
17 of computing the royalty fees payable under this sub-
18 section on either a prorated basis, as provided in clause
19 (7), or on a blanket basis, as provided in clause (8),
20 and the annual statement of account filed by the com-
21 pulsory licensee shall state the basis used for comput-
22 ing the fee.

23 “(7) If computed on a prorated basis, the annual
24 royalty fees payable under this subsection shall be cal-
25 culated in accordance with standard formulas that the

1 Copyright Royalty Tribunal shall prescribe by regula-
2 tion, taking into account such factors as the proportion
3 of commercial time, if any, devoted to the use of copy-
4 righted sound recordings by the compulsory licensee
5 during the applicable calendar year, the extent to
6 which the compulsory licensee is also the owner of
7 copyright in the sound recordings performed during
8 said year, and, if considered relevant by the Tribunal,
9 the actual number of performances of copyrighted
10 sound recordings during said year. The Tribunal shall
11 prescribe separate formulas in accordance with the
12 following:

13 “(A) for radio or television stations licensed
14 by the Federal Communications Commission, the
15 fee shall be a specified fraction of the 1 per
16 centum of the station's net receipts from advertis-
17 ing sponsors during the applicable calendar year;

18 “(B) for other transmitters of performances
19 of copyrighted sound recordings, including back-
20 ground music services, the fee shall be a specified
21 fraction of 2 per centum of the compulsory licens-
22 ee's gross receipts from subscribers or others who
23 pay to receive the transmission during the appli-
24 cable calendar year; and

1 “(C) for other users not otherwise exempted,
2 the fee shall be based on the number of days
3 during the applicable calendar year on which per-
4 formances of recordings took place, and shall not
5 exceed \$5 per day of use.

6 “(8) If computed on a blanket basis, the annual
7 royalty fees payable under this section shall be calcu-
8 lated in accordance with the following:

9 “(A) for a radio broadcast station licensed by
10 the Federal Communications Commission, the
11 blanket royalty shall depend upon the total
12 amount of the station's gross receipts from adver-
13 tising sponsors during the applicable calendar
14 year:

15 “(i) receipts of at least \$25,000 but less
16 than \$100,000: \$250;

17 “(ii) receipts of at least \$100,000 but
18 less than \$200,000: \$750;

19 “(iii) receipts of \$200,000 or more: 1
20 per centum of the station's net receipts from
21 advertising sponsors during the applicable
22 calendar year;

23 “(B) for a television broadcast station li-
24 censed by the Federal Communications Commis-
25 sion, the blanket royalty shall depend on the total

1 amount of the station's gross receipts from adver-
2 tising sponsors during the applicable calendar
3 year:

4 "(i) receipts of at least \$1,000,000 but
5 less than \$4,000,000: \$750;

6 "(ii) receipts of \$4,000,000 or more:
7 \$1,500;

8 "(C) for other transmitters of performances
9 of copyrighted sound recordings, including back-
10 ground music services, the blanket royalty shall
11 be 2 per centum of the compulsory licensee's
12 gross receipts from subscribers or others who pay
13 to receive the transmission during the applicable
14 calendar year;

15 "(D) for commercial establishments such as
16 discotheques, nightclubs, cafes, and bars at which
17 the principal form of entertainment is dancing to
18 the accompaniment of sound recordings, the blan-
19 ket royalty shall be \$100 per calendar year for
20 each location at which copyrighted sound record-
21 ings are performed. This royalty fee shall not be
22 applicable to establishments at which the perform-
23 ance of sound recordings is solely by means of
24 coin-operated phonorecord players as defined in

1 “(E) for other users not otherwise exempted,
2 the blanket royalty shall be \$25 per calendar year
3 for each location at which copyrighted sound re-
4 cordings are performed.

5 “(9) Public performances of copyrighted sound re-
6 cordings by operators of coin-operated machines, as
7 that term is defined by section 116, and by cable sys-
8 tems, as that term is defined by section 111, are sub-
9 ject to compulsory licensing under those respective sec-
10 tions, and not under this section. However, in distrib-
11 uting royalties to the owners of copyright in sound re-
12 cordings under sections 116 and 111, the Copyright
13 Royalty Tribunal shall be governed by clause (14) of
14 this subsection. Nothing in this section excuses an op-
15 erator of a coin-operated machine or a cable system
16 from full liability for copyright infringement under this
17 title for the performance of a copyrighted sound record-
18 ing in case of failure to comply with the requirements
19 of section 116 or 111, respectively.

20 “(10) The Register of Copyrights shall receive all
21 fees deposited under this section and, after deducting
22 the reasonable costs incurred by the Copyright Office
23 under this section, shall deposit the balance in the
24 Treasury of the United States, in such manner as the
25 Secretary of the Treasury directs. All funds held by

1 the Secretary of the Treasury shall be invested in in-
2 terest-bearing United States securities for later distri-
3 bution with interest by the Copyright Royalty Tribu-
4 nal, as provided by this title. The Register shall submit
5 to the Copyright Royalty Tribunal, on an annual basis,
6 a compilation of all statements of account covering the
7 relevant calendar year provided by subsection (c)(3) of
8 this section.

9 “(11) During the month of May in each year,
10 every person claiming to be entitled to compulsory li-
11 cense fees under this section for performances during
12 the preceding calendar year shall file a claim with the
13 Copyright Royalty Tribunal, in accordance with re-
14 quirements that the Tribunal shall prescribe by regula-
15 tion. Such claim shall include an agreement to accept
16 as final, except as provided in section 810 of this title,
17 the determination of the Copyright Royalty Tribunal in
18 any controversy concerning the distribution of royalty
19 fees deposited under subclause (B) of subsection (c)(3)
20 of this section to which the claimant is a party. Not-
21 withstanding any provisions of the antitrust laws, for
22 purposes of this subsection any claimants may, subject
23 to the provisions of clause (14) of this subsection, agree
24 among themselves as to the proportionate division of
25 compulsory licensing fees among them, may lump their

1 claims together and file them jointly or as a single
2 claim, or may designate a common agent to receive
3 payment on their behalf.

4 “(12) After the first day of June of each year, the
5 Copyright Royalty Tribunal shall determine whether
6 there exists a controversy concerning the distribution
7 of royalty fees for which claims have been filed under
8 clause (11) of this section. If the Tribunal determines
9 that no such controversy exists, it shall, after deduct-
10 ing its reasonable administrative costs under this sec-
11 tion, distribute such fees to the copyright owners and
12 performers entitled, or to their designated agents. If it
13 finds that such a controversy exists, it shall, pursuant
14 to chapter 8 of this title, conduct a proceeding to de-
15 termine the distribution of royalty fees.

16 “(13) During the pendency of any proceeding
17 under this subsection, the Copyright Royalty Tribunal
18 shall withhold from distribution an amount sufficient to
19 satisfy all claims with respect to which a controversy
20 exists, but shall have discretion to proceed to distribute
21 any amounts that are not in controversy.

22 “(14) One-half of the royalties available for distri-
23 bution by the Copyright Royalty Tribunal shall be paid
24 to the copyright owners, as defined in subsection (e),
25 and the other half shall be paid to the performers, as

1 also defined in subsection (e). With respect to the var-
2 ious performers who contributed to the sounds fixed in
3 a particular sound recording, the performers' share of
4 royalties payable with respect to that sound recording
5 shall be divided among them on a per capita basis,
6 without regard to the nature, value, or length of their
7 respective contributions. With respect to a particular
8 sound recording, neither a performer nor a copyright
9 owner shall be entitled to transfer his or her right to
10 the royalties provided in this subsection to the copy-
11 right owner or the performer, respectively.

12 "(d) EXEMPTIONS FROM LIABILITY AND COMPUL-
13 SORY LICENSING.—In addition to users exempted from lia-
14 bility by other sections of this title or by other provisions of
15 this section, any person who publicly performs a copyrighted
16 sound recording and who would otherwise be subject to liabil-
17 ity for such performance or to the compulsory licensing re-
18 quirements of this section, is exempted from liability for in-
19 fringement and from the compulsory licensing requirements
20 of this section, during the applicable calendar year, if during
21 such year—

22 "(1) in the case of a radio broadcast station li-
23 censed by the Federal Communications Commission,
24 its gross receipts from advertising sponsors were less
25 than \$25,000; or

1 “(2) in the case of a television broadcast station
2 licensed by the Federal Communications Commission,
3 its gross receipts from advertising sponsors were less
4 than \$1,000,000; or

5 “(3) in the case of other transmitters of perform-
6 ances of copyrighted sound recordings, including back-
7 ground music services, its gross receipts from subscrib-
8 ers or others who pay to receive transmissions were
9 less than \$10,000.

10 “(e) DEFINITIONS.—As used in this section, the follow-
11 ing terms and their variant forms mean the following:

12 “(1) ‘Commercial time’ is any transmission pro-
13 gram, the time for which is paid for by a commercial
14 sponsor, or any transmission program that is interrupt-
15 ed by or includes commercial matter.

16 “(2) ‘Performers’ are instrumental musicians,
17 singers, conductors, actors, narrators, and others
18 whose performance of a literary, musical, or dramatic
19 work is embodied in a sound recording, and, in the
20 case of a sound recording embodying a musical work,
21 the arrangers, orchestrators, and copyists who pre-
22 pared or adapted the musical work for the particular
23 performance of the sounds fixed in the sound recording.

24 For purposes of this section, a person coming within
25 this definition is regarded as a ‘performer’ with respect

1 to a particular sound recording whether or not that
2 person's contribution to the sound recording was a
3 'work made for hire' within the meaning of section
4 101.

5 "(3) A 'copyright owner' is the owner of the right
6 to perform a copyrighted sound recording publicly.

7 "(4) 'Net receipts from advertising sponsors' con-
8 sist of gross receipts from advertising sponsors less any
9 commissions paid by a radio station to advertising
10 agencies.

11 "(f) SOUNDS ACCOMPANYING A MOTION PICTURE OR
12 OTHER AUDIOVISUAL WORK.—The sounds accompanying a
13 motion picture or other audiovisual work are considered an
14 integral part of the work that they accompany, and any
15 person who uses the sounds accompanying a motion picture
16 or other audiovisual work in violation of any of the exclusive
17 rights of the owner of copyright in such work under clauses
18 (1) through (4) of section 106 is an infringer of that owner's
19 copyright. However, if such owner authorizes the public dis-
20 tribution of material objects that reproduce such sounds but
21 do not include any accompanying motion picture or other
22 audiovisual work, a compulsory licensee under sections 116
23 or 111 or under section (c) of this section shall be freed from
24 further liability for the public performance of the sounds by
25 means of such material objects."

1 SEC. 8. Section 116 of title 17 of the United States
2 Code is hereby amended as follows:

3 (a) in the title of the section insert the words
4 "and sound recordings" after the words "nondramatic
5 musical works" and before the colon;

6 (b) in subsection (a), between the words "nondra-
7 matic musical work embodied in a phonorecord," and
8 the words "the exclusive right" insert the words "or of
9 a sound recording of a performance of a nondramatic
10 musical work,";

11 (c) in the first sentence of subclause (A) of clause
12 (1) of subsection (b), delete the word "\$8" and insert
13 in lieu thereof the word "\$9". In the second sentence
14 of the same provision, delete the word "\$4" and insert
15 in lieu thereof the word "\$4.50";

16 (d) in the second sentence of clause (2) of subsec-
17 tion (c), between the words "provisions of the antitrust
18 laws," and "for purposes of this subsection," insert the
19 words "and subject to the provisions of section
20 114(c),";

21 (e)(1) in clause (4) of subsection (c), redesignate
22 subclauses (A), (B), and (C) as (B), (C), and (D), re-
23 spectively, and insert a new subclause (A) as follows:

24 "(A) to performers and owners of copyright in

1 of the total distributable royalties under this section, to
2 be distributed as provided by section 114(c)(14);” and

3 (2) in the newly designated subclause (B), be-
4 tween the words “every copyright owner” and the
5 words “not affiliated with” insert the words “of a non-
6 dramatic musical work”.

7 SEC. 9. In section 801 of title 17 of the United States
8 Code, amend subsection (b)(1) as follows: In the first sen-
9 tence, between the words “as provided in sections” and “115
10 and 116, and” insert “114,”; and in the second sentence,
11 between the words “applicable under sections” and “115 and
12 116 shall be calculated” insert “114,”. Amend subsection
13 (b)(3) by inserting, between the words “Copyrights under
14 sections 111” and “116, and to determine” the following: “,
15 114,”.

16 SEC. 10. In section 803 of title 17 of the United States
17 Code, insert at the end of that section a new subsection (c) as
18 follows:

19 “(c) with respect to the distribution of royalties
20 under section 114, the Tribunal shall retain the serv-
21 ices of one or more private, nongovernmental entities
22 to perform the functions necessary to monitor the per-
23 formance of sound recordings, to value said perform-
24 ances, to distribute royalty funds to recipients, and to
25 perform such other functions as the Tribunal shall

1 deem necessary, unless the Tribunal shall determine
2 that it is inappropriate to do so. The performance of
3 said functions by private entities shall not relieve the
4 Tribunal of the responsibility to insure the fair and
5 equitable distribution of royalty fees in accordance with
6 section 801(b)(3)."

7 SEC. 11. In subsection (a) of section 804 of title 17 of
8 the United States Code, insert "114," following the words
9 "as provided in sections" and "115 and 116, and with", and
10 at the end of clause (2) of subsection (a) add a new subclause
11 (D), as follows:

12 "(D) In proceedings under section 801(b)(1) con-
13 cerning the adjustment of royalty rates under section
14 114, such petition may be filed five years after the ef-
15 fective date of this Act and in each subsequent fifth
16 calendar year."

17 In subsection (d) of section 804, insert ", 114," between the
18 words "circumstances under sections 111" and "or 116, the
19 Chairman".

20 SEC. 12. Amend section 809 of title 17 of the United
21 States Code by inserting ", 114," between the words "royal-
22 ty fees under sections 111" and "or 116, the Tribunal".

23 SEC. 13. (a) Except as provided in subsection (b) of this
24 section, this Act becomes effective on January 1, 1981.

- 1 (b) The provisions of section 114(c)(3)(A) of title 17 of
- 2 the United States Code, as amended by section 7 of this Act,
- 3 become effective upon the enactment of this Act.

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